

DEC 18 2003

NOT FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**CATHY A. CATTERSON
U.S. COURT OF APPEALS**

JORGE ALFREDO RODAS, aka Jorge
Alfredo Rodas-Salquero

Petitioner,

v.

JOHN ASHCROFT, Attorney General,

Respondent.

No. 02-70405

Agency No. A27-428-035

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Argued and Submitted June 11, 2003
San Francisco, California

Before: SCHROEDER, Chief Judge, D.W. NELSON, and W. FLETCHER, Circuit
Judges.

Jorge Alfredo Rodas petitions for review of the decision of the Board of
Immigration Appeals (BIA) affirming the order of the immigration court, which
denied his claim for deferral of removal under the Convention Against Torture.

* This disposition is not appropriate for publication and may not be cited to or
by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

Because we conclude that Rodas committed an aggravated felony within the meaning of 8 U.S.C. § 1101 (a)(43)(G), we also conclude that we lack jurisdiction to review the BIA's decision. 8 U.S.C. § 1252(a)(2)(C).

When reviewing whether an alien is removable because he has committed an aggravated felony, we have jurisdiction only to determine our jurisdiction, “that is, to make sure as a matter of law that the alien’s conviction qualifies as an aggravated felony.” *Cedano-Viera v. Ashcroft*, 324 F.3d 1062, 1064 (9th Cir. 2003); *see also Flores-Miramontes v. INS*, 212 F.3d 1133, 1135 (9th Cir. 2000). In 1997, Rodas was convicted of grand theft and sentenced to three years of imprisonment under California Penal Code §§ 484(a), 487(a). Because California Penal Code § 484 is broader than the statutory definition of a theft offense that qualifies as an “aggravated felony” under 8 U.S.C. § 1101(a)(43)(G), we must apply the modified categorical approach to determine whether Rodas committed an aggravated felony. *See U.S. v. Corona Sanchez*, 291 F.3d 1201, 1211 (9th Cir. 2002). Under the modified categorical approach, we undertake a limited review of the record to determine whether it unequivocally demonstrates that all the elements of an aggravated felony were established. *Id.*

Rodas pled nolo contendere to Count 1 of his felony complaint, which charged him with unlawfully taking personal property exceeding \$400 in value. A

plea of nolo contendere admits every essential element of the offense that is well pleaded in the charge. *See United States v. Williams*, 47 F.3d 993, 995 (9th Cir. 1999). By pleading nolo contendere to Count 1, Rodas was convicted of all the necessary elements of a theft offense, and received a term of imprisonment of more than one year. *See* 8 U.S.C. § 1101 (a)(48)(A) (defining “conviction” to include an alien’s entering a plea of nolo contendere). Accordingly, he has committed an aggravated felony under the terms of 8 U.S.C. § 1101(a)(43)(G).

The Foreign Affairs Reform and Restructuring Act (FARRA), which implements the Convention Against Torture, does not provide this Court with jurisdiction beyond what is established by 8 U.S.C. § 1252. *See* FARRA § 2242(b), Pub. L. No. 105-277, Div. G, 112 Stat. 2681-761 (Oct. 21, 1998); *see also Cornejo-Barreto v. Seifert*, 218 F.3d 1004, 1015 (9th Cir. 2000). Therefore, we do not have jurisdiction to directly review Rodas’s claim for relief. 8 U.S.C. § 1252(a)(2)(C).

DISMISSED.